

## Response to Comments

### Waste Discharge Requirements (WDRs) for Proposed Maintenance Clearing of Engineered Earth-bottom Flood Control Channels (99-011 2010 Renewal) within Los Angeles County

**Table 1. Commenters**

1. Heal the Bay (November 12, 2009)
2. Los Angeles County Department of Public Works (November 25, 2009)

**Table 2. Response to Comments**

No.	Author	Comment	Response
1.1	Heal the Bay	In general, we support this discharge being permitted under waste discharge requirements instead of a 401 Water Quality Certification. The proposed discharge covering over 100 reaches in LA County will be extremely impactful on water quality and habitat if not regulated appropriately. Thus, a permit with additional regulatory flexibility such as that provided under waste discharge requirements is appropriate. Further, the 401 Certification that was issued “de facto” due to an oversight by your agency is completely insufficient for this discharge as discussed in our comment letter dated August 5, 2009. However, we have a number of comments and concerns with the WDR as drafted. In particular, we are very concerned with the lack of compensatory mitigation for reaches that have been included in past permits. Also, we are concerned by the minimal water quality and habitat monitoring, and reporting requirements in the proposed WDRs.	Comment noted.  Specific responses to concerns on compensatory mitigation and monitoring are addressed with the specific comments, below.
1.2	Heal the Bay	<b><i>Compensatory Mitigation</i></b>  The WDR states that “If ongoing maintenance activities were covered by previous certifications, additional mitigation will not be required” (page 28, point 25). This provision is completely inappropriate, as each maintenance year results in new impacts that would not have been foreseen over a decade ago. It is unconceivable that a one-time compensatory mitigation of 62.7 acres could truly mitigate over a decade of clearing and dredging and upcoming disturbance permitted with the proposed WDR.	The Regional Board in its actions, complies with the State of California’s (Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) of “no net loss” of wetlands and waterways. At the time the plan was made for periodic removal of vegetation from these areas (in 1999, with the first Clean Water Act 404 permit/401 Water Quality Certification and Fish and Game Streambed Alteration Agreement), that acreage was considered to be “lost” and

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		<p>New reaches were added to the maintenance program and other reaches were paved over subsequent to 1999. Additional mitigation requirements should be included in the WDR to account for disturbance within this upcoming permit cycle. Further, the WDR and supporting documents do not discuss the Big Tujunga Wash Mitigation Bank. The Big Tujunga Wash Mitigation Bank Site supposedly concluded April 1, 2005, yet there is no final report included in the WDR. Did the mitigation “take”? Is this now a successful habitat? Have criteria been established to determine the Bank’s success in perpetuity?</p> <p>Specifically, Heal the Bay recommends that the entire mitigation (from all reaches maintained by the County under this WDR) program shall:</p> <ul style="list-style-type: none"> <li>• Be based on annual impacts for the entire life of the permit;</li> <li>• Be mitigated as close to the impacted reach as possible, with a minimum criteria being that mitigation take place in the same watershed. Examples of needed mitigation projects are removal of armoring in the Malibu Creek watershed, invasive species removal in numerous watersheds, and restoration of the soft bottomed segment of Compton Creek;</li> <li>• Determine a mitigation ratio based on the quality of habitat disturbed. A disturbed, high quality habitat should receive a higher mitigation ratio than impacts to already highly disturbed habitat;</li> <li>• Involve the various watershed councils, workgroups, or stakeholders in the implementation of habitat mitigation.</li> </ul> <p>There should be no exceptions to this program. Habitat</p>	<p>compensatory mitigation was assessed. This is similar to other assessments of loss under dredge and fill Clean Water Act Section 401 Water Quality Certifications or Waste Discharge Requirements – for instance, if an amount of acreage is lost due to the installation of a bridge or new building, that loss is compensated for at the time of the building, the continued loss of those waters is not assessed anew each year.</p> <p>The Big Tujunga Master Mitigation Plan has been implemented to maintain and preserve the habitat in the mitigation areas. In addition, a Long-Term Maintenance and Monitoring Plan is currently being prepared in order to provide continued management, monitoring and maintenance direction in perpetuity for the mitigation area. The mitigation requirement has been completed successfully for impacts that were addressed in previous 401 Certifications.</p> <p>Staff agrees regarding the assessment of compensatory mitigation ratios for all new impacts associated with the proposed WDR. For any additional new impacts outside of areas compensated for at the time of the previously approved permits, additional mitigation shall be assessed per the Revised Tentative WDR (Provision No. 25). In addition, staff agrees that impacts should be mitigated for respectively within</p>

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		destruction caused by channel maintenance activities must be mitigated on a year to year basis over the life of the permit. Reaches like Compton Creek, Las Virgenes Creek and the soft-bottomed section of the Los Angeles River suffer significant habitat losses on an annual basis and these are not mitigated under the proposed WDR.	the same watersheds when possible.
1.3	Heal the Bay	<p><b>Monitoring</b></p> <p>The WDR requires a very limited, one-time monitoring program to be implemented as part of the Feasibility Study. The required monitoring is to take place before, after, and during maintenance clearing for each reach impacted. There are a number of issues with this approach, namely:</p> <p>A one-time grab sample for each reach over the next five or more years is not statistically significant to make any determination about the impacts from the maintenance activity at specific reaches, other than indicating what is happening at that moment. Heal the Bay recommends that sampling take place every year the LACDPW conducts maintenance activities within any of the reaches.</p>	<p>Typically, for dredge and fill activities, water quality monitoring is only required when a stream is diverted to be sure that water quality is not affected by diversion activities. Prevention of other potential impacts is ensured by use of appropriate BMPs identified in the 401 certification. The maintenance activities proposed herein is on-going rather than a one-time activity; the Board will need to regulate in a manner consistent with other dredge and fill activities or justify a different approach and requirements based on the nature of the activity. In this case, although not required for most dredge and fill activities, due to the extent and on-going nature, of the maintenance and clearing activities water quality monitoring is justified to ensure effectiveness of maintenance and clearing techniques and BMPs. However, because the maintenance and clearing techniques and BMPs for a specific reach are generally constant from year to year, Regional Board staff has determined that aligning the reach-specific water quality monitoring with the Feasibility Study for the watershed, and conducting such monitoring once for each reach during the five-year term of the WDR, is appropriate.</p>

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1.4	Heal the Bay	There is no wet weather sampling event. An additional wet weather sample needs to be added to the monitoring program, which would mean that four (4) samples must be collected from each site. Most of the water quality impacts from the LACDPW maintenance activity to receiving waterbodies are likely to occur during the first rain event.	Channel clearing maintenance activities are conducted in a narrow window of time, largely when rains are less likely. The water quality sampling associated with the yearly Feasibility Studies will be sufficient to determine the effectiveness of the BMPs.
1.5	Heal the Bay	There are no upstream (reference condition) or downstream (off-site impacts) sampling stations of the impacted reach. These monitoring data points help determine water quality changes relative to reference conditions and downstream impacts to receiving waterbodies. As such, two additional monitoring locations need to be added to the monitoring program for each reach. The monitoring program for each reach where LACDPW maintenance activities take place should have at least three (3) sampling stations: above project site, at the project site, and below the project site.	The tentative WDR specifies that sampling will be conducted before, during and after – daily for a week and then weekly. but does not specify how many sampling stations are the minimum required. The revised tentative WDR (Finding 49) has now been modified to specify a minimum of three sampling sites, above project site, at the project site, and below the project site.
1.6	Heal the Bay	The water quality assessment treats all reaches the same, in terms of waterbody length and width, and overall area impacted. In reality, the geographic area impacted differs, and therefore the amount work, type of machinery, and volume of sediment removed differs from reach to reach. As such, the smaller reaches may be appropriately sampled with a single monitoring event (12 total samples collected). However, one monitoring station may not be sufficient for larger reaches, such as the Compton Creek reach—approximately 2.1 miles long. One sampling station for this reach would be completely inadequate. As such, Heal the Bay recommends that for those reaches greater than half a mile in length, multiple monitoring stations be required—one	The management question to be answered with this monitoring is: are the techniques used, and BMPs employed, effective to prevent water quality impacts. The sampling required is sufficient to answer that question. In addition, sampling is required, at a minimum, daily for a week and then every week during the activity, so over the several week clearing of Compton Creek sufficient samples would be taken to draw reasonable conclusions about clearing effects on water quality.

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		additional location for every additional half mile. Therefore, a reach such as Compton Creek would require five (5) sampling stations.	
1.7	Heal the Bay	<p>The proposed monitoring program in the WDR requires monitoring for dissolved oxygen, pH, turbidity, total suspended solids, and temperature. We recommend that additional constituents be added to this list, such as nutrients, metals, and trash. There are a number of current TMDL requirements in place for the LA River (Bacteria, Metals, Toxicity, and Trash) and Malibu Creek (Sediment, Bacteria, Metals, and Nutrients). In addition, there are many TMDLs yet to be adopted. As such, waste load allocations and load allocations are required for each pollution source that has a reasonable potential to cause or contribute to a water quality standard exceedance. While a discharge of material does not take place immediately after the clearing and dredging, a discharge of sediment (contaminated or not) does take place subsequent to the first large rain event. Maintenance and grading activities have met the reasonable potential standard for these water bodies because sediments often are repositories for fecal bacteria, nutrients and metals. Therefore, the LACDPW maintenance action constitutes a possible source. Yet the WDR fails to detail how WLA and LAs will be met and how monitoring will be sufficient to understand the pollutant contribution. Therefore, Heal the Bay recommends the following constituent monitoring program:</p> <p>Basic monitoring:</p> <p>Dissolved Oxygen; pH; turbidity; temperature; Total Suspended Solids (TSS); and Nutrients (Ammonia and Nitrite/Nitrate)</p>	<p>As discussed, sediment is the concern after clearing activities, the monitoring to be conducted does include the parameters necessary to determine if erosion/sediment potentially carrying contaminants are entering waterways due to the activities.</p> <p>Condition 47 'Water Quality Monitoring' (now Condition 49 in the revised tentative WDR) has been modified to include specifics on what is required when water quality standards are exceeded. To wit:</p> <p>Any exceedances of water quality standards may result in corrective and/or enforcement actions, including increased monitoring and sample collection.</p> <p>See response comment, 1.3 above</p>

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		<p>through the use of field techniques such as meters.</p> <p>Additional monitoring:</p> <p>When turbidity levels exceed the stated thresholds in the WDR, then additional constituents to be monitored will be required.</p> <p>Additional constituents to be monitored will include: Hardness and Metals.</p> <p>In addition, Heal the Bay believes that these water quality monitoring requirements should apply to all reaches where LACDPW conducts maintenance, not just the watershed where the feasibility study is implemented during a given year.</p>	
1.8	Heal the Bay	<p><b><i>No Discussion of Relevant Policies</i></b></p> <p>Similar to Los Angeles County’s Department of Public Work’s (LACDPW) 401-certification application for the proposed maintenance clearing of engineered earth-bottom flood control channels project, there is little to no discussion of water quality or water resource management policies or strategies of the Regional Water Quality Control Board (RWQCB), State Water Resources Control Board (SWRCB), or Los Angeles County that are relevant to this WDR permit. The only water resource management policy discussed in this WDR is LACDPW’s FEMA Levee Certification (pages 4 and 5; points 23 through 28), which deals with the issue of flood control.</p> <p>Absent from this WDR is any dialogue on water resource/watershed management strategies or policies to deal with flow reductions to these waterbodies requiring ‘channel maintenance’. For example, the following should be considered in the context of these WDRs: the RWQCB’s Standard Urban Stormwater Mitigation Plan (SUSMP) requirements, the RWQCB’s many TMDL Basin Plan Amendments, the County’s</p>	<p>Item 46 of the WDR “Study Workplan” (now item 48 in the revised tentative WDR) requires a discussion of the requirements of the Los Angeles County Municipal Separate Storm Sewer (MS4) NPDES Permit, Standard Urban Stormwater Mitigation Plans (SUSMPs), Total Maximum Daily Loads (TMDLs) and other pertinent local plans including, but not limited to the Integrated Regional Water Management Plan (IRWMP) (including implementation of, and plans for, increased stormwater infiltration), the City of Los Angeles’ Integrated Resources Plan, any relevant watershed master plans (ex. LADPW’s San Gabriel River Master Plan) and the County’s Drought Management Plan in the hydrological analysis to determine necessary vegetation removal and to identify areas where more vegetation may remain.</p> <p>The revised tentative WDR has been added to by</p>

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		<p>Low Impact Development Ordinance, the Integrated Regional Water Management Plan (IRWMP), the County's Watershed Management Division 2008 Strategic Plan, and the County's Drought Management Plan. All of these policies or planning documents discuss best management practices and tools for reducing runoff flows to receiving waterbodies. Highlighting strategies and policies that deal with the 'input' component of hydrologic capacity is critical to this WDR because 'Lost hydrologic capacity' is often cited as a reason to remove vegetation, and therefore destroy habitat, from these earthen bottom creeks, streams, or rivers. Yet, there is never a discussion regarding policies or mechanisms, some already in place, to reduce runoff amounts entering these receiving waterbodies. In other words, if these many plans and policies were being implemented appropriately, there would be a reduced need to remove vegetation from these channels and destroy habitat.</p>	<p>Finding 24 under 'Background/History' to include a description of the Watersheds and the principal watershed master plans.</p> <p>The strategies and policies that deal with the input component of hydrologic capacity are critical to the long-term control of flooding and management of waters in Los Angeles County, however the activities regulated by this WDR need to manage the potential for flooding in these next five years. As the strategies and policies that deal with the input component of hydrologic capacity are strengthened and begin to have real effect, Los Angeles County and other flood control managers will have to respond to the changed conditions. Continued evaluations over this and subsequent WDRS will be required.</p>
1.9	Heal the Bay	<p>In addition, the WDR does not include any discussion of water quality policies and monitoring efforts to ensure that water quality standards are met. As such, it is uncertain how the receiving waterbodies in this WDR, many of which are listed as impaired on the 303(d), will meet water quality standards. Given that the grading work requires the denuding of large amounts of acreage prior to the rainy season, sedimentation through erosion of disturbed soils will occur. The WDR as drafted does not provide assurance that sediments (contaminated or not) do not enter the receiving water and impact downstream resources. This is especially concerning for those reaches with identified impairments or developed TMDLs. There are a number of current and future TMDL requirements in place for the LA River</p>	<p>The activities regulated by this WDR will meet water quality standards by BMPs in a similar manner to other regulated dredge and fill type activities. Channel clearing will take place primarily during dry season. Water, if present where clearing is to take place, will be diverted.</p> <p>In addition, the effectiveness of the employed BMPs will be evaluated by the water quality monitoring which is required by the yearly Feasibility Studies.</p>

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		(Bacteria, Metals, Toxicity, and Trash) and Malibu Creek (Sediment, Bacteria, Metals, and Nutrients). As such, waste load allocations and load allocations are required for each pollution source that has a reasonable potential to cause or contribute to a water quality standard exceedance. Maintenance and grading activities meet the reasonable potential standard for these water bodies because sediments often are repositories for fecal bacteria, nutrients and metals. Yet the WDR fails to detail how this will happen without required monitoring. Maintenance activities need to be part of TMDL implementation and compliance assurance programs. What is the Regional Board doing to ensure that maintenance impacts are covered under pertinent water quality policies?	
1.10	Heal the Bay	Further there is no discourse within the WDR on protecting the ecological role these waterbodies provide or maintaining Basin Plan designated beneficial uses. Every reach included in this WDR has some type of biological beneficial uses such as Warm, Wild, Wet, Rare, or Cold. There are a number of projects that have taken a different, integrated approach to dealing with water resource management, water quality, and habitat protection, such as the Tujunga Wash Restoration, the Dominguez Gap Wetlands, and Sun Valley Watershed—of note, these are all LACDPW projects. Ecosystem restoration and habitat protection are main features in the County’s Watershed Management Division’s 2008 Strategic Plan. Yet, the WDR fails to score the relevancy of these projects to the proposed channel maintenance.	The designated beneficial uses of the reaches covered by the tentative WDR are identified in Table 1 “Reaches Included,” and additional language has been added to the revised tentative WDR Finding 24, providing descriptions of general watershed characteristics and several of the watershed-wide management plans relevant to the proposed channel maintenance. Additionally, the tentative WDR acknowledges the biological functions and values of these reaches, and requires LACFCD to conduct pre-clearing biological surveys by a qualified biologist (see Provision No. 9) and, as part of the Feasibility Studies to be conducted for specified watersheds each year, to assess biological functions and values and report on these in the required Technical Report (see Finding No.50 in the revised tentative WDR).
1.11	Heal the Bay	In sum, the RWQCB needs to take an integrated watershed	Provision 13 of the tentative WDR states “The



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		management approach, where water resource management, water quality requirements, and ecological protection, are all taken into consideration for regulatory actions. Ultimately, this means that the RWQCB needs to integrate Clean Water Act Policies, such as 303, 305, 319, 401, 402, and 404, into an overarching program that enables Basin Plan water quality standards to be met in each of the watersheds	<p>County shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act.”</p> <p>Furthermore, the required Feasibility Studies are intended to promote an integrated watershed management approach, by considering biological functions and values within the watershed and affected reaches, monitoring water quality to prevent impacts from clearing activities, while providing necessary flood protection.</p>
1.12	Heal the Bay	<p>Does the RWQCB have any goals or objectives for:</p> <ul style="list-style-type: none"> <li>• Reducing the frequency of disturbance in earthen-bottom creeks, streams or rivers?</li> <li>• Reducing the number of reaches needing “maintenance”?</li> <li>• Reducing the hydromodification impacts (downstream scour, sedimentation, and erosion) of increasing peak flow velocities through channelization and maintenance?</li> <li>• Reducing the continued loss of earthen-bottom creeks, streams, or rivers to complete channelization?</li> <li>• Promoting restorative best management practices with</li> </ul>	<p>The Regional Board shares and implements through its actions, the goals of the California Wetlands Conservation Policy, which ensues “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...”, and Section 13142.5 of the California Water Code, which requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.” Furthermore, the Regional Board supports the State’s development of the Wetlands and Riparian Area Protection Policy (State Board</p>

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		<p>native plants to reduce sediment and or contaminant loading after “maintenance”?</p> <p>Given the geographic scope of the current 401-certification, and the proposed WDR, it is critical that the RWQCB take an integrated approach. Unfortunately, as written, this WDR continues the piece-meal, singular approach to watershed management, and fails to protect receiving water biological and water quality beneficial uses.</p>	<p>Resolution 2008-0026), which is underway, and has, itself, identified reducing impacts from hydro-modification as a priority (Regional Board Resolution No. R05-002).</p> <p>Reducing the frequency of disturbance due to the proposed clearing activities, the number of reaches disturbed, and related impacts, while maintaining necessary flood control, requires improved understanding of the hydraulic capacity and existing conditions of all reaches covered by this WDR. This important need will be addressed by the required, yearly, “Feasibility Study”. However, this WDR does not replace the Integrated Regional Water Management Plan (IRWMP), or the relevant watershed master plans.</p>
1.13	Heal the Bay	<p><b><i>Updating Outdated Reference Material</i></b></p> <p>Once again, this proposed WDR cites many outdated studies, permits, and environmental documents that are 10 to 15 years old. Public policies, regulatory requirements, site conditions, and environmental concerns have changed drastically over this time period. Once more, the application uses studies that assume flow rates to indefinitely increase over time. For example, the 1999 Mitigated Negative Declaration that is cited in the WDR must be renewed as a number of site conditions have changed with this certification application. Also how can the 1996 “Effects of Vegetation on the Capacity of Soft-Bottom Flood Control Channels” and 1993 “Design Memorandum for Compton Creek Improvements” be cited for why vegetation must be removed for earthen bottom areas, when both of these documents clearly do</p>	<p>The WDR cites the relevant documents, at this time. The requirement for the Feasibility Study is included to address the legitimate concern expressed over changed conditions and policies and the goal to develop a plan for allowing vegetation/habitat to remain, to the maximum extent feasible, within these earthen-bottom channels.</p> <p>The Streambed Alteration Agreement is issued by the California Department of Fish and Game, and as such, is not under the purview of the Regional Board.</p>

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		not take into account current policies targeting stormwater capture, infiltration and reuse. How is the California Department of Fish Game's Streambed Alteration Agreement from 1999 still valid? The WDR clearly states that the "agencies involved intended to develop a more comprehensive plan in subsequent years...the goal was to develop a plan that would allow for vegetation/habitat to remain, to the maximum extent feasible, within these earthen-bottom channels." Has there been any movement over the last 10 years by the LACDPW to update the Streambed Alteration Agreement to the RWQCB's intent?	
1.14	Heal the Bay	<p>The 1999 Maintenance Plan developed by the County, ACOE, CDFG, and RWQCB does not provide sufficient data to critically evaluate the County's actions or impacts on the natural resources. In reviewing past Maintenance Plan reporting forms, the information collected is either incomplete or insufficient to provide any usefulness. There is a 2004 report that states a specific comment about water quality as "good." What does "good" mean in terms of compliance with water quality objectives when there is no water quality data? There are countless reports with missing trash information. For instance the question of how much trash was present when the project was initiated or trash removed when the project was completed, is unanswered. Then there is the <i>Biological Resources Monitoring Form</i>, which fails to provide any relevant data on habitat conditions prior and post grading/maintenance activities, or any discussion of impacted fauna species (vertebrate or invertebrate). In addition, the over- simplification of the flora species with comments like "ruderal vegetation" exist, and is "typified by castor bean", is not even a rudimentary inventory of floral species present.</p>	<p>This tentative WDR includes specific changes to obtain better data including pre-clearing biological surveys and a requirement for photo documentation of clearing sooner after clearing activities are completed. See Provision No 30.</p> <p>This tentative WDR also requires expanded reporting to the Regional Board including submittal of work plans, annual reports and feasibility studies, and the provision of information to the public at large. See Findings Nos. 42 and 44 of the revised tentative WDR.</p> <p>With the additional requirements for water quality monitoring and biological assessments, the Regional Board can assess any need for modification of the WDR or amendments for future WDR issuance.</p>

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		It is impossible to determine whether the Maintenance Plan is outdated based on what information is required or whether the County is incorrectly completing the forms. Either way, the lack of information and data creates a great deal of uncertainty about the true impacts of 'channel maintenance' to ecological resources, and compliance with the Basin Plan. At some point, the RWQCB must require the County to develop new plans and obtain updated permits before approving any future 401 certification or WDR.	The Technical Assessment Report required as part of the yearly Feasibility Studies will be informative in determining whether the requirements and allowable clearing in the 1999 Maintenance Plan are outdated.
1.15	Heal the Bay	<p><b><i>No Information on Past Compliance</i></b></p> <p>In reviewing this WDR, there was no information contained in the permit regarding the County of Los Angeles' compliance with related permits or certification conditions related to this project. As stated in this WDR, the County was required to complete an "assessment of the biological functions and values for each reach." (page 3, point 15). The WDR goes on to state that the information was never submitted. In the 1999 and 2003 401-certifications issued to the LACDPW, there were a number of conditions that required monitoring and or baseline assessments to be conducted (2003 Conditions 5, 6, 9, 14, 15, 16, 17, and 21) prior to and after any work. Yet, there is no water quality, toxicity, sediment, or ecological monitoring data provided in the current application associated with past activities. Without this critical baseline monitoring and reporting information, how can the RWQCB issue permits for this discharge that are protective of receiving waters and beneficial uses? Further, how can the public determine if these natural resources are being protected or impacted if no monitoring data is collected or proper assessment completed? The lack of any objective scientific data makes it impossible to make this</p>	<p>The County has been in compliance with previously issued Clean Water Act Section 401 Water Quality Certifications.</p> <p>The Regional Board letter of August 29, 2008, which extended the existing Certification, required certain information be submitted to the Board by November 14, 2008 including "assessment of the biological functions and values for each reach.". The required information was not submitted. In addition, the required Feasibility Studies will require water quality monitoring in each of the watersheds, as the Feasibility Studies are conducted.</p> <p>Provision 29 "Annual Reporting" has been modified in the revised tentative WDR to include the requirement for the Regional Board approve an outline for the Annual Report which will include any technical or field checklists to be utilized.</p> <p>Water quality data will be collected when waters are diverted and as part of the Feasibility Studies.</p>

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		determination. With all of the County's channel maintenance activities, how is the RWQCB protecting existing stream and river beneficial uses, ensuring progress towards TMDL compliance, or ensuring other Basin Plan objectives are met if no water quality or biological monitoring is collected.	Biological monitoring will be reported in the County Flood Control District's Annual Reports as required by this WDR.
1.16	Heal the Bay	<p><i>Permitted Activities</i></p> <p><b>Condition #34:</b> This condition details the rational used to identify baseline levels for maximum vegetation removal for each reach. Yet there is no discussion regarding how frequently the LACDPW uses the maximum level of vegetation removal for each reach. In addition, there is no discussion of updating the 1999 Streambed Alteration Agreement, which would more than likely reduce the maximum volume amount of vegetation LACDPW could remove.</p>	<p>This is the maximum level identified in the 1999 certification for this maintenance program. No restriction on the frequency of removal is specified, however, typically, LACFCD clears these channels once per year, prior to the wet season.</p> <p>The intent of the Feasibility Studies is to identify those areas where it is feasible for vegetation to remain and identify new maximum levels of vegetation removal. The Streambed Alteration Agreement is entirely under the purview of the California Department of Fish and Game. However, the 401 Certification or WDR issued by this Regional Board can establish these new levels of maximum vegetation removal, when such information is available, regardless of the provisions of the CDFG Streambed Alteration Agreement.</p>
1.17	Heal the Bay	<p><b>Condition #35:</b> Before issuing this WDR, the RWQCB staff must review and evaluate existing reports required by the Mitigation Monitoring Program or the Maintenance Plan to determine if the information being collected by the LACDPW fulfills monitoring goals. The required reports currently provide little data to evaluate LACDPW's project. As such, it is impossible to determine any modifications that are needed to improve the project implementation, ecological resources protection, or Basin Plan compliance.</p>	Regional Board staff agrees that more information is needed to fully determine if any modifications are needed to improve project implementation, protection of ecological resources, or compliance with Basin Plan provisions. The requirements of this tentative WDR will provide that information.

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1.18	Heal the Bay	<p><b>Condition #38:</b> In riparian habitat, such as earthen bottom rivers, streams, or creeks, ponded water is not necessarily a ‘bad element’ as Condition #38 implies. Ponds frequently provide much needed habitat benefits for macroinvertebrates, amphibians, fish, and birds, particularly in the summer and fall. Also, what is the nexus between ‘ponded water’ and ‘allowing storm flows to flow freely during future storms’?</p>	<p>Condition 38 describes conditions in County Reach 29, Las Virgenes Creek. The description also includes that there is ponded water, but the ponded water is not the condition which makes mechanical removal imperative.</p> <p>The nexus is between the removal of vegetation, root balls and sediment to allow “storm flows to flow freely...”</p>
1.19	Heal the Bay	<p><b>Work Plan Notification Protocol</b></p> <p><b>Condition #40:</b> For the sake of public transparency, interested stakeholders should be included as a group to receive LACDPW’s Annual Work Plan and ‘notices of additional routine maintenance work’. In addition, the onus should be on the discharger for disseminating the information to interested stakeholders in timely manner.</p> <p>Also, thresholds for additional review need to be expanded to include: changes in regional or statewide policies (e.g. the development of Index of Biological Integrity (IBI) criteria or Bioassessment in Water Quality Regulation), or changes in on-site conditions (e.g. ecological assessments determine the presences of sensitive species or habitat, or significant water quality impairments from the project).</p>	<p>Provision 6 of the tentative WDR provides that the County Flood Control District</p> <p>“shall develop and publish watershed maps which indicate areas of maintenance (impact acreages and types of vegetation impacted) and approximate schedules (including baseline biological surveys, post-surveys and maintenance activity descriptions). This information shall be made publicly available on the LACFCD internet website and be noticed to watershed councils and other interested parties prior to any routine maintenance activities.” And in addition, “After submission to the Regional Board Executive Officer, the County will post the Annual Project and Mitigation Monitoring Reports as required.”</p> <p>Changes in regional or statewide policies can be appropriately reviewed when this WDR is renewed.</p>
1.20	Heal the Bay	<b>Best Management Practices (BMPs)</b>	Condition #41 (now Condition 43 of the revised

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		<p><b>Condition #41:</b> Best Management Practices should be implemented to “eliminate” impacts to water quality and beneficial uses, not minimize them. Also, the RWQCB should require the use of re-vegetation of impacted areas as a possible BMP to reduce the amount of sediment leaving the site after maintenance is completed. In addition, determining BMP efficacy needs to be part of LACDPW monitoring plan, if the RWQCB is to achieve the objective of “not result in changes in the quantity or quality of storm water of downstream waterbodies...”</p>	<p>tentative WDR) has been modified to read that BMPs shall be implemented “in order to avoid impacts to water quality that would result in exceedances of water quality standards.”</p> <p>In addition, Condition 47 Water Quality Monitoring (now Condition 43 of the revised tentative WDR) has been modified to include An additional statement To wit:</p> <p>Any exceedances of water quality standards may result in corrective and/or enforcement actions, including increased monitoring and sample collection.</p>
1.21	Heal the Bay	<p><i>Feasibility Study</i></p> <p><b>Condition #42:</b> Arguably this exercise should have already been completed through the implementation of previous 401-certifications (1999, 2003, 2008 extension). In addition, the RWQCB requested similar data in a letter to LACDPW dated August 29, 2008 (see page 3, point 15). That RWQCB request was never completed by LACDPW. At a minimum, a full watershed assessment should occur for each reach at least once per five year WDR cycle, and a summary of biological impacts at each reach should occur on an annual basis.</p>	<p>Comment noted. See response to comment 1.15.</p> <p>The objective of the annual Feasibility Studies is to determine the status of the channel reaches, to include habitat value and functions at least once per five year WDR cycle.</p> <p>Annual Reporting, including biological impacts, is required. See Provision 30 of the revised tentative WDR. The Annual Report will cover photo-documentation and biological monitoring, and the results of water quality monitoring performed for each reach.</p>
1.22	Heal the Bay	<p><b>Condition #43:</b> What criteria are to be used to determine ‘potential’? If no criteria are developed or recommended prior to</p>	<p>The potential for vegetation to remain is determined by the hydraulic capacity of each reach</p>

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		<p>the commencement of these feasibility studies, then the County could theoretically determine that all reaches must be free of vegetation. The RWQCB should develop the criteria and included it in the WDR permit. The criteria need to be developed in consultation with interested watershed stakeholders.</p> <p>In addition, once a segment of creek, river, or stream are determined to meet the threshold for allowing vegetation to remain, then defining the ‘potential’ restoration opportunities for riparian habitat and vegetation growth need to be determined. This element needs to be conducted with interested watershed stakeholders input.</p>	<p>and, therefore, its ability to meet flood control requirements.</p> <p>The Regional Board will make the ‘Study Workplans’ for the Feasibility Studies available for stakeholder comment prior to approval of the “Study Workplans.’</p>
1.23	Heal the Bay	<b>Condition #44:</b> For the sake of public transparency, interested stakeholders should be involved in the determination of which watersheds shall be selected for future feasibility studies.	Regional Board will take stakeholder input on the order in which watersheds shall be studied through the Feasibility Study requirement. See Response to Comment 1.22.
1.24	Heal the Bay	<p><b>Condition #46:</b> Any plan developed by the LACDPW should be made available to interested watershed stakeholders for review and comment prior to being approved by the Executive Director.</p> <p>As part of the hydrological analysis, the RWQCB must require the LACDPW to include an assessment of watersheds where increased stormwater capture and infiltration opportunities exist to reduce flow volumes to impacted reaches.</p> <p>In addition, Heal the Bay recommends that Index of Biological Integrity (IBI) scores be determined for all impacted soft-bottomed reaches. Also, all biological functions and values need to consider both existing and potential ecological resources. In assessing those biological functions and values, what entity will</p>	<p>The Regional Board does require consideration of stormwater capture and infiltration opportunities. Condition #46 (now Condition 48 in the revised tentative WDR) states: The hydraulic analysis shall include, but not be limited to, the height and density of vegetation in the earthen channel bottom and its effect on the conveyance capacity of flood flow in the channel as well as a consideration of changes in expected stream flow in response to requirements of the Los Angeles County Municipal Separate Storm Sewer (MS4) NPDES Permit, Standard Urban Stormwater Mitigation Plans (SUSMPs), Total Maximum Daily Loads (TMDLs) and other pertinent local plans including, but not limited to the Integrated Regional Water Management Plan (IRWMP) (<b>including</b></p>



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		validate the outcome? Heal the Bay recommends that a third-party collective develop the criteria to be used in reviewing identified biological functions and values.	<p><b>implementation of, and plans for, increased stormwater infiltration</b>), the City of Los Angeles' Integrated Resources Plan, the relevant watershed master plan and the County's Drought Management Plan.</p> <p>IBI scores evaluate the health of biotic communities in the sediments in the waters. As County Flood Control District's channel clearing is in the vegetated areas generally next to waters then IBI may not be the best indicator of impacts to biologic communities.</p> <p>A third party collective to develop criteria would not be an element of a specific WDR for one agency.</p> <p>The Feasibility Studies are about hydraulic capacity to ensure that flood control needs are met. When the reach-specific study has demonstrated the required capacity, then, for reaches where more vegetation can remain, an assessment of biological values to help determine where additional vegetation (or less frequent vegetation removal or only one-sided vegetation removal) will be most valuable.</p>
1.25	Heal the Bay	<b>Condition #48:</b> Targeted numeric goals and overarching watershed objectives should be included as part of the Technical Assessment Report (TAR). Beyond assessing water quality conditions in impacted reaches, the TAR should state RWQCB	Heal the Bay has identified important overarching goals; the reach of this technical assessment report is targeted and more modest but will provide very useful information when working on the

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		<p>short and long term objectives for these reaches, such as:</p> <ul style="list-style-type: none"> <li>• How to reduce the frequency of disturbance in earthen-bottom creeks, streams or rivers?</li> <li>• How to reduce the number of reaches needing annual “maintenance”?</li> <li>• How to reduce the hydromodification impacts (downstream scour, sedimentation, and erosion) of increasing peak flow velocities through channelization and maintenance?</li> <li>• How to reduce the loss of earthen-bottom creeks, streams, or rivers to complete channelization?</li> <li>• How to restore, enhance, and sustain the ecological resources?</li> </ul> <p>To reiterate comments made for Condition #43, prior to commencing with the Feasibility Study, the RWQCB should first develop the criteria to be used to determine ‘potential’? If no criteria are developed or recommended prior to the commencement of these feasibility studies, then the County could theoretically determine that all reaches must be free of vegetation. The criteria need to be developed in consultation with interested watershed stakeholders.</p> <p>In addition, once a segment of creek, river, or stream are determined to meet the threshold for allowing vegetation to remain, then defining the ‘potential’ restoration opportunities for riparian habitat and vegetation growth need to be determined. This element needs to be conducted with interested watershed stakeholders input.</p>	<p>overarching goals.</p> <p>See response to comment 1.12</p> <p>If it is determined by these studies that a reach can achieve its required flood control capacity with less or more vegetation removal, the Army Corps of Engineers Clean Water Act Section 404 permit may also need to be modified. At that time, the next step of “defining the ‘potential’ restoration opportunities for riparian habitat and vegetation growth” does need to be determined with input of stakeholders.</p>

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		Finally, the RWQCB needs to provide interested stakeholders an opportunity in the review and comment of the TAR.	
1.26	Heal the Bay	<p><b>Condition #49:</b> As currently written in the WDR, it is unclear who will make or provide the recommendations. Is it the LACDPW, the RWQCB staff, or a watershed stakeholder collective? Heal the Bay recommends that the County, the RWQCB, and interested public agencies and watershed stakeholders all participate in the development of recommendations to the Executive Director.</p> <p>In addition, the RWQCB should require the inclusion of long-term strategies to preserve earthen bottom habitats, enhance existing ecological resources, and over-time increase the number of reaches where vegetation is allowed to remain or be restored, even if they don't currently exist. The development of reports or studies that offer no recommendations for long-term strategies will be completely inadequate as an end outcome to this process.</p>	<p>The County Flood Control District will be required to make recommendations under this WDR.</p> <p>Achievement of long-term goals goes beyond the requirements of this WDR but is addressed by Watershed Master Plans, Integrated Regional Water Management Plans etc.....</p> <p>Basin Plan standards have to be met through compliance with this WDR.</p>
1.27	Heal the Bay	<p><b>Provisions</b></p> <p><b>Condition #9:</b> The RWQCB must require that all biological surveys contain complete information and photo documentation. Historically, the reporting on ecological resources within impacted reaches has been incomplete and inadequate. For example, most of the past reports have failed to provide any relevant data on habitat conditions prior and post grading/maintenance activities, or any discussion of impacted fauna species (vertebrate or invertebrate). In addition, the oversimplification of the flora species with comments like "ruderal vegetation" exist, and is "typified by castor bean", is not an adequate inventory of floral species present in a number of these</p>	<p>The Annual Report will describe in detail all of the maintenance activities performed during the previous year and the Annual Reports will be posted on the County's website for stakeholders.</p> <p>An outline of the Annual Reporting will be required for Executive Officer approval prior to the production of the Annual Report to ensure complete reporting will be included in the Annual Report (see Provision 29 of the revised tentative WDR).</p>

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		reaches.	
2.1	Los Angeles County Flood Control District	<p>The Los Angeles County Flood Control District (District) would like to advise the Regional Water Quality Control Board (Regional Board) and staff of several important considerations.</p> <p>a. The District is charged by statute with the responsibility of protecting lives and property from flood waters. See Water Code App. section 28-2 (purpose of the Los Angeles County Flood Control Act is "to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district.") The District has worked and will continue to work with the responsible governing agencies, including the Regional Board, to ensure that the earth bottom channel maintenance activities are performed in a manner that reduces impacts on plants and wildlife in the channels. To the extent that there is a conflict between the requirement to maintain the flood control characteristics of the channels to protect public safety and property and the requirement to preserve vegetation in the channels, however, the former must take precedence. The District employs engineers with technical expertise to analyze and calculate the ability of a given channel reach to safely convey the established level of flood protection.</p> <p>b. The flood control channels are not natural watercourses. They are, as the title of the WDR indicates, "engineered" channels, designed to replace the natural watercourses which historically flooded the Los Angeles basin. The engineering process to reshape the watersheds began in the early 20th Century and reduced the historic floodplains and</p>	<p>Comments noted. However, it should also be noted that though these earthen bottom channels have been engineered for flood control purposes, they are Waters of the State with designated beneficial uses and water quality objectives to protect those beneficial uses, which must be protected as required by state law.</p>

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		<p>redirected flows into engineered channels. The failure to properly maintain the channels can result in the very flooding threat that the Legislature charged the District to protect against.</p> <p>Our vision is to ensure that our communities are flood safe and supplied with clean water. Our goal is to maintain our facilities and projects in a manner that respects the environment and enhances the communities we serve. We plan and support the delivery of an advanced system for flood protection, improving water quality, and conserving water while maximizing habitat, open space, and recreational opportunities. While we are willing to work with the Regional Board regarding the requirements of this WDR, we must ensure that these requirements do not conflict with our obligation to protect public safety and property.</p>	
2.2	Los Angeles County Flood Control District	<b>Finding 1:</b> This finding should reflect that the District is the applicant. We have proposed new language in the attached redline of the WDR.	The tentative WDR has been revised to refer to the Applicant as Los Angeles County Flood Control District (LACFCD).
2.3	Los Angeles County Flood Control District	<b>Finding 6:</b> The District is unaware of any evidence in the record to support the statement made in this finding that "the agencies involved intended to develop a more comprehensive plan in subsequent years beyond direct use of the 1997 limits." In the absence of such evidence, this statement should be removed. By contrast, the work done in the channels during the 1997-1999 time period, which resulted in the maintenance of nearly 77% of the existing vegetation in the channels, is consistent with the finding that the goal was to allow for "vegetation/habitat to remain, to the maximum extent feasible" within the earth-bottom channels. This finding should reflect that of the 203 vegetated acres, only 48.2 acres ultimately were removed, and	<p>Language has been revised. See Finding 6 of the revised tentative WDR. However, at the time of the original permit, it was the Regional Board's intent to develop a more comprehensive maintenance plan in the future and this was articulated at multiple agency meetings.</p> <p>An additional finding (No. 7 in the revised tentative WDR) has been added to the "Background" section of the WDR to describe the mitigation undertaken at Big Tujunga Wash, to</p>

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		that this removal was mitigated by the establishment of the Big Tujunga Wash Mitigation Bank, which contains 62.7 acres.	wit: "The 48.2 acres impacted by removal of vegetation was mitigated by the establishment of the Big Tujunga Wash Mitigation Bank, which contains 62.7 acres, a 1.3:1 mitigation ratio."
2.4	Los Angeles County Flood Control District	<b>Finding 15:</b> As far as the request for a "hydrologic analysis of each reach" referenced in this finding, the District submitted to Regional Board staff copies of the "Effects of Vegetation on the Capacity of Soft-Bottom Flood Control Channels, 1996, by County of Los Angeles Department of Public Works" and "Design Memorandum for Compton Creek Improvements, December 1993", by the U.S. Army Corps of Engineers, as well as a copy of the Compton Creek Inundation Map. We received no other comments from the Regional Board staff. Furthermore, our staff met with Regional Board staff on November 19, 2008 to discuss the issues relating to this requirement. Subsequently, new 401 Certification conditions were issued by staff. Therefore, we request that this finding be deleted, as it has no relevance to the WDR.	Both the documents referenced have been available since prior to the issuance of the original permitting for this maintenance program, do not provide new information and were received, again. The documents do not provide a reach by reach analysis as was required.
2.5	Los Angeles County Flood Control District	<b>Finding 19:</b> This finding indicates that "this WDR will act as a CWA Section 401 Water Quality Certification" for channel maintenance in those channels covered by a different Section 404 permit than the one as to which the Regional Board's jurisdiction to issue a 401 certification had been waived. The finding should be clarified to indicate that to the extent a Section 401 certification is required, the process for issuing a certification will be followed, and that the WDR would not automatically constitute the certification.	Provided the project scope is the same in those channels as described in the Report of Waste Discharge, this WDR is intended to act as the CWA Section 401 certification for those reaches for which the CWA Section 401 certification has not been previously waived. It is staff's intent that the discharger need not file an additional application for certification and that only this WDR, and no additional certification will need to be issued for those reaches. By definition, they apply only to the reaches subject to the

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			certification.
2.6	Los Angeles County Flood Control District	<b>Finding 20:</b> The provisions of this finding are appropriate for a Section 401 certification and do not belong in the WDR. Thus, this finding should be deleted.	These standard conditions are required for all CWA Section 401 certifications. To the extent the WDR serves as a 401 certification for the new reaches, the standard conditions are appropriate.
2.7	Los Angeles County Flood Control District	<p><b>FEMA Levee Certification</b></p> <p><b>Permitted Activities Provisions:</b></p> <p><b>Paragraph 34:</b> This paragraph asserts that the channel clearing conducted under the WDR shall not exceed the vegetation removal identified in the 1997-98 storm season clearing levels and reflected in the Maintenance Plan. This provision fails to reflect the potential results of the Feasibility Study's hydraulic review discussed in Paragraph 42. If the hydraulic analysis using the established level of flood protection indicates that the vegetation clearance under the Maintenance Plan has been insufficient to ensure that the reach will fulfill its engineered flood control function, then additional vegetation will be required to be removed from that reach. In other reaches, the hydraulic analysis may result in less vegetation clearance. Thus, Paragraph 34 should be modified as shown in the redline comments to reflect the results of the Feasibility Study and to confirm that the 1997-98 analysis was applicable only to reaches reviewed at that time.</p>	The requirement has been be modified. See paragraph 36 of the revised tentative WDR.
2.8	Los Angeles County Flood Control District	<b>Paragraph 35:</b> The Maintenance Plan referenced in this paragraph is pre-existing, and thus was not, "prepared for this project." The District has proposed changes to this paragraph that are consistent with the comments made on Paragraph 34	The statement has been clarified. See paragraph 37 of the revised tentative WDR.

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2.9	Los Angeles County Flood Control District	<p><b><i>Additional Activities Permitted Provisions:</i></b></p> <p><b>Paragraph 38:</b> The Section 401 application submitted by the District requested one time mechanical sediment and vegetation removal for two reaches, Reach 29 and Reach 33, Medea Creek (PD T1378). This paragraph should be amended, as shown in the attached redline, to include Reach 33.</p>	Reach 33 has been added. See paragraph 40(b) of the revised tentative WDR.
2.10	Los Angeles County Flood Control District	<p><b>Paragraph 40:</b> The District has several questions and comments concerning this paragraph:</p> <p>1) Paragraph 31 in the general Provisions also requires submittal of an Annual Work Plan. Is the Annual Work Plan requested in Paragraph 40 the same document? The WDR should provide for only one such document, to avoid confusion. Paragraph 31 in the General Provisions should be deleted, as noted below.</p>	Paragraph 31 has been deleted and its language combined with this paragraph 40 (now paragraph 42 in the revised tentative WDR) for clarity.
2.11	Los Angeles County Flood Control District	Paragraph 40 indicates that the Executive Officer (EO) may require additional time to "add additional requirements." If the EO wishes to amend the WDR to "add additional requirements," this must be done through a formal amendment process and a noticed hearing.	The "add additional requirements" provision is for the work plan, which requires Executive Officer approval and does not need to return to the Board.
2.12	Los Angeles County Flood Control District	To the extent that the Annual Work Plan covers work to be done pursuant to an approved Maintenance Plan, there is no need for the EO to review those elements of the work plan or to provide any approvals. Thus, the scope of the review by the EO should cover only work that departs in some way from a previously approved Maintenance Plan. Otherwise, the District is concerned that required maintenance will not be completed prior to the commencement of the rainy season.	Review of the Annual Work Plan will afford the Executive Officer the opportunity to determine if the intended work is covered by this WDR or if, for instance, specific activities proposed will require separate permitting. The Maintenance Plan does not include information which would be included in an Annual Work Plan such as if a particular reach will not be cleared that year or schedules.



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2.13	Los Angeles County Flood Control District	The requirement for submittal of the Annual Work Plan by May 1 of each year coincides with the deadline for submittal of the Annual Report reflecting the previous clearing season. Thus, the deadline imposed by the May 1 date is burdensome. In addition, the District may not be in a position to determine maintenance needs by May 1. The District therefore requests that the Annual Work Plan be submitted by July 1.	The due date for the Annual Work Plan shall be revised to July 1. See paragraph 42 of the revised tentative WDR.
2.14	Los Angeles County Flood Control District	The discussion of the thresholds by which routine maintenance might require additional review is not clear. We have proposed changes to the discussion in the redline to clarify what we believe to be the intent of this provision.	Changes for clarity have been made to the tentative WDR. See paragraph 42 in the revised tentative WDR.
2.15	Los Angeles County Flood Control District	To the extent that additional mitigation is required, the District does not agree that mitigation ratios should "be determined on a case by case basis." The District previously has been required to mitigate impacts on a 1.3:1 basis if the removal was of native vegetation and not performed by hand clearing. We have inserted language in the redline to make clear and consistent the basis for mitigation.	Mitigation ratios are always determined on a case by case basis, considering both the value of habitat to be lost and the value of the proposed mitigation which can range from actual creation of new habitat to restoration to enhancement. At the time of the original permitting for this maintenance program, 1.3:1 was determined to be a suitable mitigation for the habitat impacted considering that the habitat is periodically impacted but will periodically function, and the value of a large mitigation site in Big Tujunga Wash.
2.16	Los Angeles County Flood Control District	The District is concerned that review by the EO may result in delay in meeting schedules to complete critical maintenance work in the reaches prior to the rainy season. Thus, we have requested that any EO review be completed by 60 days from receipt of the Annual Work Plan and that the review of a notice of additional routine maintenance work be completed within 15	The review of the Annual Workplan is set at 60 days and the review notice of additional routine maintenance has been changed to 15 days. See paragraph 42 in the revised tentative WDR.

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		days of receipt of the notice.	
2.17	Los Angeles County Flood Control District	The District often is faced with having to conduct emergency maintenance activities, such as maintenance required following damage to the channels as the result of storms. In the redline, we have proposed that such work, which would not involve impacting additional areas outside of the footprint set forth in the Maintenance Plan, not be subject to EO review, provided that notice is provided to the EO.	The tentative WDR has been modified. See item No 42 in the revised tentative WDR.
2.18	Los Angeles County Flood Control District	<p><b>Best Management Practices</b></p> <p><b>Paragraph 41:</b> The District has several concerns with the provisions in this paragraph:</p> <p>It is unrealistic and not feasible to implement Best Management Practices (BMPs) to avoid "any" impacts to water quality. BMPs are intended to mitigate impacts. The District requests instead that the WDR require that BMPs be implemented to "minimize impacts to water quality," as shown in the attached redline, and further that such BMPs shall include all such BMPs previously utilized by the District during channel maintenance work.</p>	Paragraph 41, (now paragraph 43 of the revised tentative WDR) has been modified to read that BMPs shall be implemented "in order to avoid impacts to water quality that would result in exceedances of water quality standards."
2.19	Los Angeles County Flood Control District	It is not feasible for the District to conduct maintenance in a manner that will "not result in indirect impacts to water quality or beneficial uses of downstream water bodies." The requirement is itself vague and ambiguous, but the clearing of vegetation will necessarily have some impact on downstream water bodies. Moreover, the passage of flood waters is not a "discharge" covered by the WDR; the scope of the WDR is limited to the activities conducted in the actual clearing itself. The flow of flood waters is a passive activity not controlled by the District. Please see the requested redlined changes in this paragraph. The District cannot comply with the BMP requirements as written, as they impose an infeasible requirement and one that would	<p>If "the activities conducted in the actual clearing itself ..." result in stormwater bringing much more sediment into the river than those activities are appropriately regulated by this WDR.</p> <p>See response to comment 2.18.</p>

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		necessarily and adversely impact the District's ability to protect public health and safety and property.	
2.20	Los Angeles County Flood Control District	<p><b>Feasibility Study</b></p> <p><b>Paragraph 42:</b> The paragraph indicates that the Feasibility Study is required to determine that the channel clearing activities have "avoided, minimized or appropriately mitigated for effects on the beneficial uses of the affected reaches or to require changes to channel clearing activities to achieve the necessary avoidance, minimization or mitigation." These determinations previously have been made with respect to those reaches covered by the Maintenance Plan and the 1997-98 study. As Finding 6 indicates, the goal of the agencies which conferred at that time was "to develop a plan that would allow vegetation/habitat to remain, to the maximum extent feasible," within the channels.</p>	Those determinations were made with the best available information available at the time. Conditions have changed necessitating that the determinations be updated.
2.21	Los Angeles County Flood Control District	Moreover, the effort to protect the biological resources within the channels has been successful. For example, in 2002, only one territory of the Least Bell's Vireo, a bird protected under federal and state law as an endangered species, existed in the channels. Today, at least 13 territories for this species exist in the channels. The work being done by the District has preserved and expanded these territories and will continue to do so. The Maintenance Plan, and the requirements of the U.S. Army Corps of Engineers, specifically requires the District to protect this and other sensitive species during their nesting season and also to maintain existing habitat.	Comment noted.
2.22	Los Angeles County Flood Control District	It is infeasible for the District to agree to reduce the amount of the vegetation it clears in a reach if, in doing so, it reduces the flood carrying capacity of the reach below the established flood protection level. This remains the irreducible obligation of the District, and nothing in the WDR should affect that obligation or	Staff agree that if preserving additional vegetation within a reach would reduce flood carrying capacity "below the established flood protection level" that the vegetation cannot remain. The WDR requires a reach by reach demonstration of

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		threaten the public safety without coming into conflict with the requirements of State or federal law and regulations.	where more (or less) vegetation may be preserved. After more than a decade, it is appropriate to update these determinations.
2.23	Los Angeles County Flood Control District	<b>Paragraph 43:</b> As discussed above, the Feasibility Study requested in this paragraph cannot be conducted solely to determine whether there is a potential for vegetation to remain within a channel bottom, but also whether additional vegetation may be required to be removed. Also, the only type of vegetation that can be considered for retention is non-invasive vegetation; where invasives exist, they must be removed.	The tentative WDR has been modified to include the possibility of determining less vegetation can remain. See item 45 in the revised tentative WDR. Where invasives require removal not due to flood capacity, but due to the need to control the invasives, the removal should be conducted under another permit such as the Army Corps of Engineers' Regional General Permit 41 for Removal of Invasive, Exotic Plants.
2.24	Los Angeles County Flood Control District	<b>Paragraph 44:</b> See changes set forth in attached redline to clarify the obligation with respect to the Los Angeles River watershed. It should be specifically noted that a hydraulic study already conducted of the Compton Creek channel indicates that it does not meet FEMA requirements for flood protection. Since vegetation in that channel already must be removed pursuant to the approved Maintenance Plan, there is no purpose in conducting a hydraulic study of the channel, since no modification of the Maintenance Plan would be permitted. Thus, the redline deletes this reach from the Feasibility Study requirement. A copy of the study performed for FEMA is attached to these comments as Exhibit A	Since the County Flood Control District has recently conducted a hydraulic study of Compton Creek, to the extent that the work satisfies the purposes of the Feasibility Study, the County will not need to repeat such an analysis for the purposes of the Feasibility Study. The District will need to make specific recommendations as to vegetation.
2.25	Los Angeles County Flood Control District	<b>Paragraph 46:</b> The District has a number of comments concerning this provision:  1) Please note that the nature of a study of the <i>hydraulic</i> capacity of a reach versus a <i>hydrological</i> study of a watershed needs to be distinguished. The former, which the District is	Comments noted.  The tentative WDR has been modified to specify the word hydraulic. See revised tentative WDR

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		<p>prepared to perform, examines the impact that the presence of vegetation has on the ability of the reach to carry flood waters. Briefly, the presence of vegetation both slows water flow and reduces the carrying capacity of the reach. A hydraulic analysis examines how much, if any, of the vegetation can remain while still not affecting the channel's ability to handle flood waters in accordance with the established level of flood protection. A hydrological study involves an assessment of the ability of a given portion of the watershed to discharge waters based on topography, impervious area, and other factors. Hydrological analysis is well beyond the ability of the District to perform within the time frames set forth in the WDR. Moreover, given the requirements of the paragraph, to examine Manning's Roughness Coefficients, etc., it is clear that the intent of staff was to require a hydraulic study, not a hydrological study.</p> <p>2) The request to consider the impacts of the MS4 Permit, TMDLs and other water quality-based programs is not relevant, since the basic impact of those initiatives is on infiltration of dry weather urban runoff, and not storm water runoff. In fact, many of the structural BMPs called for in TMDLs, for example, require bypasses to allow high volumes of storm water to pass through the BMPs so that flooding does not result. Also, the SUSMP, TMDLs, and IRWMP programs referenced in this paragraph have multiple year implementation schedules, making their impacts (which are, as noted above, nominal compared to the overall volumes of flood water that the channels are designed to handle) impossible to assess in the context of a Feasibility Study conducted during a single year. Also, any consideration of these programs which involve policies and constructions largely outside of the flood control channels is beyond the scope of a hydraulic study which can be completed within the time frames required in the WDR.</p>	<p>paragraph 48. The impacts of the other programs are relevant although they are long-term. See response to comment 1.8.</p> <p>The tentative WDR does not dictate which "reasonable Manning's n" should be used, only that several should be used.</p>

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		3) Since the protection of the public from flooding is within the responsibility and expertise of the District, the WDR should not dictate which "reasonable Manning's n" shall be used in the Feasibility Study. Those assumptions must be left to the District, as the responsible agency.	
2.26	Los Angeles County Flood Control District	The Feasibility Study should not involve any assessment of biological functions or values of the reaches, since that assessment already has been conducted. Moreover, each reach is currently required to receive a biological assessment which is updated every two years. If the hydraulic study indicates that the quantity of vegetated areas in a reach should be revised, the Maintenance Plan for that reach should also reflect the change. Moreover, biological consultants retained by the District conduct annual surveys and conduct special status species surveys of every reach to be maintained. All of these surveys have been submitted to the Regional Board and are in its files. Moreover, the Section 404 Permit issued by the U.S. Army Corps of Engineers prohibits work during a large number of reaches during nesting seasons and other times of the year when species may be present in the reach	The extent to which an assessment of biological functions has already been conducted by the LACFCD, a description of that assessment and its results can be included in the Workplan for the Watershed Feasibility Study, and will be considered by Regional Board staff when determining whether further assessment is necessary.
2.27	Los Angeles County Flood Control District	Proposed changes reflecting these comments are in the attached redline of the draft WDR.  <b>Paragraph 47:</b> In most cases, the maintenance work done by the District is performed away from flowing waters. In fact, the protocols followed by the District crews call for working around flowing water, if it exists, so as to avoid adverse impacts. In many cases, the reach in question will be dry, without any running water. Thus, to the extent that any monitoring is required, it should be limited to situations where a diversion has been required.	See response to comment 1.3.

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2.28	Los Angeles County Flood Control District	<p><b>Paragraph 48:</b> The District has several comments concerning this provision.</p> <p>1) As noted above, the Feasibility Study requires <i>a hydraulic</i> analysis, not a <i>hydrological</i> analysis.</p> <p>2) The Technical Report's assessment of biological functions and values should reflect existing biological survey data already collected by the District in response to the requirements of the U.S. Army Corps of Engineers (ACOE), the Regional Board, and the California Department of Fish and Game (CDFG).</p> <p>3) As discussed above, if the conclusion of the hydraulic study is that the existing vegetation in the reach must be reduced from what was called for in the Maintenance Plan, this information also must be included in the Technical report.</p>	<p>1) See response to comment 2.25.</p> <p>2) See response to comment 2.26.</p> <p>3) See response to comment 2.23.</p>
2.29	Los Angeles County Flood Control District	<p><b>Paragraph 49:</b> The District has several comments concerning this paragraph:</p> <p>1) Vegetation in the channels has the potential for vigorous regrowth. There is no need for the District to re-establish native vegetation, as it will grow in areas that are not regularly maintained. The District crews will need to continue to monitor and remove invasives, however.</p> <p>2) With respect to the requirement for schedules of vegetation removal frequency "in order to ensure the maximum habitat preservation, consistent with necessary flood control," the</p>	<p>1) See response to comment 2.39</p> <p>2) Comment noted.</p> <p>3) See response to comment 2.23</p>

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		<p>District already is limited by the Section 404 permit to work in many channels only at times of the year that will not interfere with the nesting times of certain bird species.</p> <p>3) As has been discussed elsewhere in these comments, where the hydraulic analysis has disclosed the need to remove additional vegetation, this must also be part of the recommendation.</p> <p>The Maintenance Plan referred to in the WDR is a joint effort with the ACOE, the Regional Board and the CDFG. Changes to the Maintenance Plan must be coordinated and approved by those agencies as well. Therefore, changes must be coordinated with those other agencies. The District has suggested changes in the redline that would make the revised Maintenance Plan effective for any clearing done after the date of approval of the Maintenance Plan by all responsible agencies.</p>	
2.30	Los Angeles County Flood Control District	<p><b>Regulatory Authority</b></p> <p><b>Paragraphs 56 and 57:</b> See redline changes to reflect changes in relevant dates</p>	The dates have been changed in the tentative WDR. See revised tentative WDR Nos.58 and 59.
2.31	Los Angeles County Flood Control District	<p><b>Provisions</b></p> <p><b>Paragraph 4:</b> See redline change, indicating that no submission of permits is required if the same have already been submitted.</p>	The clarification has been made in the revised tentative WDR, paragraph No. 4.
2.32	Los Angeles County Flood Control District	<p><b>Paragraph 6:</b> The District does not object to putting information on its website concerning its planned maintenance activities, including a schedule and a summary of existing biological information. However, the requirement to provide</p>	Outreach and transparency will be important to increase stakeholder understanding and participation in maintenance of channels. The County already maintains an “eNotify” e-mail



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		specific notice to "watershed councils and other interested parties" is vague, unreasonable, and unnecessary. Those parties are not identified, and the District should be held in violation of the WDR if it neglects to notice some party. Moreover, those parties are free to go on the website at any time. Special notice should not be required. Also, while the District has no objection to providing the information to the EO, it objects to any requirement that the information be first approved by the Executive Officer. We have requested changes, as shown on the redline.	notification system to provide up-to-date information on topics of interest. This noticing is within the capabilities of the LACFCD and does not require the LACFCD to identify interested parties, since they will self identify by signing up on the eNotify system.
2.33	Los Angeles County Flood Control District	<b>Paragraph 8:</b> This item is duplicative of the requirements of Paragraph 13, and can be deleted.	Staff finds the item useful for clarity.
2.34	Los Angeles County Flood Control District	<b>Paragraph 11:</b> This requirement is duplicative of other requirements contained in the draft WDR, including Paragraph 9, above. This paragraph should be deleted.	Staff finds the item useful for clarity.
2.35	Los Angeles County Flood Control District	<b>Paragraph 13:</b> This requirement comes from the former Section 401 certification, and is not required as part of a WDR and should be deleted.	The provision applies and is retained in the tentative WDR.
2.36	Los Angeles County Flood Control District	<b>Paragraph 17:</b> This requirement is applicable to grading projects, and not the type of work performed in the channel maintenance. Therefore, it should be deleted.	Paragraph 17 has been deleted in the revised tentative WDR.
2.37	Los Angeles	<b>Paragraph 18:</b> The District has conferred with its biologists	Marking sensitive areas with flagging is consistent

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	County Flood Control District	regarding this item, and has a number of comments. First, there is no need to "mark properly" all areas of vegetation. At the present time, sensitive areas are marked with flagging to protect endangered or threatened species. A biological monitor is available at the request of the District and is present when sensitive species are present during maintenance activities to ensure that there is no impact on the species. Second, the District is unaware of any concerns that have been raised regarding over-removal of vegetation in the channels or any threat to endangered plant or animal species that would require the overly prescriptive requirements of this item. Third, the District objects to making its biologists available for "consultation" with Regional Board staff within 24 hours of the request. Please see changes in the redline.	with the requirement to "mark properly."  Clearing a reach is done over a short period of time and if concerns about biological impacts are raised then they will need to be addressed expeditiously in order to prevent further/prolonged impact.
2.38	Los Angeles County Flood Control District	<b>Paragraph 22:</b> See redlined change to supply monitoring results within 30 days of sampling. If the sampling is conducted at the end of the month, it is often difficult to make the 15 <sup>th</sup> day deadline.	The revised tentative WDR has been modified (Provision 22) so that results are required within 30 days of the sampling event.
2.39	Los Angeles County Flood Control District	<b>Paragraph 23:</b> This item is not applicable to type of work being done in the channels. The BMPs followed by the District's crews and their contractors are required to minimize impacts and have been successful in the past. In that the purpose of the maintenance is largely to remove vegetation, restoring vegetation is neither advisable nor practical. Moreover, as noted above, vegetation regrows rapidly once the rainy season has ended, so there is no need to replant native vegetation. This item should be deleted, except for the last sentence.	The tentative WDR specifies that this requirement applies to areas "outside of areas of maintenance" such as areas that may be impacted negatively due to the movement of equipment in and out of permitted maintenance areas.

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2.40	Los Angeles County Flood Control District	<b>Paragraph 24:</b> See redline for clarifying modifications, including that mitigation is required only for the removal of native riparian vegetation (not invasives) and is not required when performing hand clearing.	Mitigation is assessed for impacts regardless if impacts are created by mechanical or hand clearing.
2.41	Los Angeles County Flood Control District	<b>Paragraph 25:</b> The District objects to the requirement in this item for mitigation at the ratio of 2:1. Past mitigation for impacts to vegetation was imposed at 1.3:1, and this ratio is appropriate, given that the riparian vegetation largely re-grows following maintenance. Moreover, any mitigation should be offset on a 1:1 basis for areas in other reaches where the Feasibility Study has indicated that additional areas that are currently being maintained can be left without degrading the channel's flood control capacity. Also, no mitigation should be required for the removal of invasive vegetation or for maintenance involving hand clearing. Also, if drains transferred from developers were subject to mitigation in previous certifications, no additional mitigation should be required. These changes are set forth in the redline.	See response to comment 2.15  The tentative WDR has been modified to clarify that if mitigation was completed for reaches due to requirements assessed in previous certifications, no additional mitigation shall be required. See revised tentative WDR paragraph 25.
2.42	Los Angeles County Flood Control District	<b>Paragraph 26:</b> The District does not believe that the Mitigation Plan needs to be submitted to the EO or 401 Certification Unit staff prior to its scheduled clearing. Mitigation will be required, but the District is concerned that any negotiations regarding the scope and performance of the Mitigation Plan (which is itself unrelated to the conduct of the maintenance) will delay the maintenance and create a possible threat to the public safety. Also, to the extent that the Mitigation Plan will also require the approval of other agencies, delays could be extensive. Since the District generally has only two months to conduct the clearing, from September 1 to November 2, such delays could affect public safety. The District also objects to the EO being given the	The mitigation plan for new reaches does need to be submitted; however, the revised tentative WDR (Condition 26) has been modified to clarify that scheduled clearing can take place even if proposed mitigation for the new reaches is not yet approved.  The Executive Officer, as delegated by the Board, has the authority to assess mitigation as necessary to achieve the “no net loss” policy and consistency with the intent of the WDRs, including making modifications to the Mitigation Plan. The manner of how the Executive Officer might propose or require changes to the plan is consistent with the

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		option to make modifications to the Mitigation Plan instead of requiring it to be re-submitted by the District. The redline addresses these comments.	Regional Board's practice in a variety of settings, and is an appropriate means of ensuring adequate mitigation is performed.
2.43	Los Angeles County Flood Control District	<b>Paragraph 27:</b> While the District would attempt to find mitigation areas in the same watershed, "the vicinity of the impact reach" would rarely be feasible in the downstream ultra-urban areas of the watersheds. We have proposed a modification that would allow mitigation to occur other than in the same watershed so long as the District can demonstrate that such areas do not exist.	The tentative WDR has been modified to reflect the requested change. See revised tentative WDR paragraph 27.
2.44	Los Angeles County Flood Control District	<b>Paragraph 30:</b> The District has a number of comments on this item:  1) Given that the WDR will not be considered for approval by the Regional Board until at least the February 2010 Board meeting, and that maintenance clearing has largely been completed for 2009, the requirement to submit the Annual Report and Mitigation Monitoring Report should commence on April 1, 2011, and concern the 2010 maintenance season.	As a requirement of this WDR, full reporting on District maintenance activities and impacts to waters of the State including for the maintenance completed in 2009, is required. Any additional information required by this WDR which was not required by previous certifications, need not be included.
2.45	Los Angeles County Flood Control District	2) The requirement in sub-Paragraph 30(d)-(f) to provide documentation of vegetation, trash and sediment removed from project areas is not feasible, as this debris is combined when removed from the project site. There also is no way to segregate and weigh the debris at the project site. To do so would be prohibitively expensive and would also slow down the required maintenance activity, which could have adverse consequences to any species in the reach being maintained. Also, there is no need for this information, as it does not go to any requirements to protect beneficial uses in the reaches.	Estimates based on the visual inspection of on-site personnel will be sufficient. The tentative WDR has been modified to clarify that estimates may be used. See revised tentative WDR paragraph 30. Many waterbodies in the Los Angeles Region are negatively impacted by trash and estimates of trash removal during clearing activities will help understanding of the extent of the trash impairments, and will aid in the protection of beneficial uses.

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2.46	Los Angeles County Flood Control District	3) The reference in sub-Paragraph 30(g) to provide GPS coordinates of "mitigation areas" is vague and ambiguous. Does this refer to mitigation areas required as the result of new vegetation removals that require mitigation? Please clarify requirement.	The tentative WDR has been clarified. See Provision 30 (h) in the revised tentative WDR.
2.47	Los Angeles County Flood Control District	4) The requirement in sub-Paragraph 30(j) to provide water monitoring results in "an easy to interpret format" is vague and ambiguous. The District should not be placed in the position of potentially being in violation of the WDR if staff believes that the monitoring results are not "easy to interpret." This requirement should be deleted.	Regional Board staff are available to discuss potential formats with the District if the District is unsure what may constitute "easy to interpret."
2.48	Los Angeles County Flood Control District	5) The District objects to the requirement in sub-Paragraph 30(n) that it provide a certified Statement that all conditions of the WDR have been met. This requirement provides the potential for another avenue of violation if, for example, the Regional Board staff finds a minor violation of the WDR as to which the District was unaware or as to which it believed no violation had occurred. Such a certification requirement is not part of other WDRs approved by the Regional Board and should not be part of this one. The District already is under an obligation to comply with the WDR.	The revised tentative WDR has been modified (now paragraph 30 (o)) to read that the Annual Report will include "A certified Statement from LACFCD that all information reported in the Annual Report is complete and accurate. This Report will include a summary of compliance with all requirements of the WDR."
2.49	Los Angeles County Flood Control	<b>Paragraph 31:</b> See comments regarding this requirement and the requirement to submit an Annual Workplan set forth in Paragraph 40, above. This paragraph should be deleted, to avoid	See response to comment 2.10.

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	District	confusion over the applicability of such similar paragraphs.	
2.50	Los Angeles County Flood Control District	<p><b>Enforcement</b></p> <p><b>Sub-Paragraph 37(c) (erroneously identified in draft as second Paragraph 37(b):</b> While the Regional Board has jurisdiction to add or modify conditions of the WDR, it can do so only in a noticed hearing. And since this is covered in Paragraph 38, this subparagraph should be deleted.</p>	Staff agrees this subparagraph should be deleted as it is redundant with paragraph 38.
2.51	Los Angeles County Flood Control District	<p><b>Paragraph 38:</b> While the Regional Board has jurisdiction to terminate or modify, with cause, a WDR, it lacks jurisdiction to take any action to prevent the District from fulfilling its statutory duty to protect public safety and property through the maintenance of the flood control channels. Nothing being done by the District to maintain the channels represents an endangerment to public health or the environment. The prevention of that maintenance, however, would represent such an endangerment.</p>	While the Regional Board has no intention to prevent flood control/channel maintenance activities, the Regional Board is required to ensure that such activities are protective of water quality. The commenter is incorrect in asserting that its flood control and channel maintenance activities cannot represent an endangerment to public health or the environment. The Los Angeles Regional Water Quality Control Board is the principal public agency with the obligation to protect water quality and thereby public health and the environment in this region and must take those actions it deems necessary to fulfill those obligations. The District is appropriately obligated to undertake its responsibilities in a manner that is protective of public health and the environment, consistent with the Clean Water Act and Porter-Cologne Act, and permits issued pursuant thereto.
2.52	Los Angeles County Flood Control	<p><b>Paragraph 39:</b> The Regional Board staff has authority to require, pursuant to Water Code Section 13267, additional technical or monitoring reports if the need for that information</p>	The Regional Board has the authority under Cal. Water Code section 13383 to “establish monitoring, inspection, entry, reporting, and

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	District	overcomes the cost of requiring it. However, the Regional Board cannot require "any information the Regional Board may request," as set forth in this paragraph. It should be deleted, as shown in the redline.	<p>recordkeeping requirements, as authorized by Sections 13160, 13376, or 13377 or by subdivisions (b) and (c) of this section, for any person who discharges, or proposes to discharge, to navigable waters..." Staff agrees that the Regional Board also has the authority to require that any person who has discharged, discharges ... or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires" under Section 13267.</p> <p>For clarity however, the first sentence of paragraph 39 has been deleted in the revised tentative WDR as it is merely declarative of existing law.</p>
2.53	Los Angeles County Flood Control District	<b>Paragraph 40:</b> As set forth in the comment to Paragraph 38, the Regional Board cannot rescind the ability of the District to perform its lawful duties, to protect public safety and property through the maintenance of the flood control channels. Thus, the WDR cannot provide that it may be terminated, which would potentially prohibit the ability of the District to perform maintenance on the channels.	See response to comment 2.51. The Regional Board believes that the District will undertake is flood prevention and maintenance activities in a manner that avoids a dispute between the Regional Board and the District with respect to the District's obligations to comply with the permit. Likewise, the Regional Board believes the District will not undertake activities that could trigger the Board's need to reconsider the WDRs pursuant to paragraph 40. WDRs are not issued in perpetuity; the Regional Board has both the right and obligation to ensure that all discharges occur in a manner protective of water quality, and to that end, WDRs may as warranted, be rescinded, reissued, or modified as appropriate. Paragraph

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			41 recites that this permit has a five-year term.
2.54	Los Angeles County Flood Control District	<p>Additional Comments</p> <p><b>Water Code Section 13241 and other Findings:</b> The draft WDR does not provide any findings as to the factors set forth in Water Code section 13241. Pursuant to Water Code section 13263(a), the Regional Board must make findings regarding Section 13241, as well as the other required findings in Section 13263(a)</p>	<p>If the District believed that some of the provisions of the permit are beyond the requirements of federal law, the District should have identified those provisions and explained how they would not otherwise be appropriately required in the 401 certification. The District has made no such showing. Indeed, the provisions of this WDR are intended to mirror the provisions that would be required in a 401 certification. Therefore, the holding in <i>City of Burbank v. SWRCB</i> is not applicable, and the District has failed to present evidence to the contrary.</p>
	Los Angeles County Flood Control District	<i>Los Angeles County Flood Control District included a “redline” version of the tentative WDR with the comment letter.</i>	Changes suggested by the District’s “redline” have been incorporated as described in response to comments, above and where useful for clarity.